Supreme Court, U.S.
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No. 92-1525

In the

Supreme Court of the United States

October Term 1992

LARRY MOORE and LEON MITCHELL,
Petitioners,

v.

METROPOLITAN WASTE CONTROL COMMISSION, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether class members who were once plaintiffs in a class action, but have opted out of the class settlement to pursue their own remedies in district court, have standing to appeal the district court's approval of the class settlement agreement.

LIST OF PARTIES TO THE PROCEEDING BELOW

The petitioners omitted some of the parties to the proceedings below. A full list of the parties and their alignment in the United States District Court for the District of Minnesota and in the Eighth Circuit Court of Appeals are as follows:

Timothy R. Franklin,
Plaintiff-Appellee
Larry Moore,
Plaintiff-Appellant
LeeRoy J. Neal, Fleurette C. Price,
Plaintiffs-Appellees
Leon Mitchell,
Plaintiff-Appellant
Terry M. Mitchell, Anthony Kilgore,
Plaintiffs-Appellees

v.

Metropolitan Waste Control Commission; International Union of Operating Engineers - Local 35; International Brotherhood of Electrical Workers; Pipefitters - Local 55; Machinist District - Lodge 77; Painters and Allied Trade Union - Local 62; Bricklayers Union - Local 1; and the American Federation of State, County, Municipal Employees - Local 668; Metropolitan Waste Control Commission Management Association,
Defendants-Appellees

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STATEMENT OF THE CASE

The issue in this case is whether two former plaintiffs in a class action suit who rejected representation by class counsel, filed separate complaints and opted out of the class settlement have standing to challenge that settlement.

Petitioners Moore and Leon Mitchell were plaintiffs, along with others, in a race discrimination class action complaint filed in 1988. Pet. A-3.[1] During negotiations of a class settlement, and before any class was certified, Moore and Mitchell decided to pursue their own actions. Id. In February of 1990, they dismissed class counsel and retained their own attorney who filed a new complaint on their behalf and attempted to settle their claims. Id. Moore and Mitchell subsequently became dissatisfied with that attorney and began negotiating with the employer-defendant pro se. Moore settled his claim in June of 1990. Id.

In the meantime, the parties reached a settlement in the class action and the district court granted preliminary approval of a consent decree. Notice of the fairness hearing and procedures for opting out were sent to all class members including petitioners. Pet. A-4. The petitioners opted out of the class settlement, but also raised objections to the consent decree at the fairness hearing. Pet. B-4.

The district court held that the petitioners did not have standing to object to the consent decree since they had opted out of the class settlement and were not prevented from pursuing their own individual actions. Pet. B-3. The court nevertheless considered and rejected petitioners' objections to the decree. Pet. B-4. The district court approved of the consent decree and class settlement by order dated July 31, 1992. Pet. B-8.

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[1] Citations are to the petitioners' Appendix.

Petitioners appealed the approval of the class settlement to the Eighth Circuit Court of Appeals. The Eighth Circuit dismissed the appeal, holding that the petitioners lacked standing to appeal the class settlement after opting out of the class covered by the agreement. Pet. A-1-5.

SUMMARY OF THE ARGUMENT

The court of appeals correctly held that the petitioners lacked standing to appeal approval of a class settlement that did not affect them because they opted out of the class settlement.

ARGUMENT

I. THE PETITIONERS LACKED STANDING TO APPEAL BECAUSE THEY OPTED OUT OF THE CLASS SETTLEMENT

Petitioners have no stake in the outcome of an appeal and thus have no standing. To have standing to appeal a party must be aggrieved by a district court's order, Estate of Bishop v. Betchel Power Corp., 905 F.2d 1272, 1276 (9th Cir. 1990), and have a direct financial stake in the appeal. Morrison-Knudson Co. v. CHG Int'l, Inc., 811 F.2d 1209, 1214 (9th Cir. 1987), cert. dismissed, 488 U.S. 935 (1988). To have standing to appeal a class settlement, a party must be affected by its terms. City of Inglewood v. Unnamed Citizens, 508 F.2d 1283, 1285 (9th Cir. 1974); Utility Contractors Association of New Jersey, Inc. v. Toops, 507 F.2d 83, 85-86 (3d Cir. 1974). Only class members, i.e. those governed by the class settlement, have standing to object to the settlement. Gould v. Alleco, Inc., 883 F.2d 281, 284 (4th Cir. 1989), cert. denied, 493 U.S. 1058 (1990).

The petitioners do not dispute that they discharged class counsel, hired other counsel, filed a separate complaint and opted out of the class settlement. They are in no way adversely affected because other people settled their own claims. Their assertions that if they had stayed in the class case, and if they had been determined to be adequate class representatives, they would have made more money in the settlement is pure conjecture.[2] Petitioner Mitchell is free to settle or litigate his claim for whatever it is worth. Petitioner Moore settled his claims long before the class settlement was approved. Petitioners may regret past decisions, but that does not give them standing to interfere with an approved class settlement that did not adversely affect their interests.

II. THIS CASE DOES NOT PRESENT THE ISSUE OF WHETHER UNNAMED CLASS MEMBERS WHO ARE BOUND BY THE SETTLEMENT HAVE STANDING TO APPEAL

Petitioners argue that this case should be heard because it presents an issue on which the circuits are divided: whether unnamed class members have standing to appeal a class determination. That is not the issue before the Court. The petitioners are not unnamed class members governed by the class settlement, they are former class members not covered by the settlement. The lack of jurisdiction in this case is clear because the judgment entered does not affect the interests of the petitioners.

The decisions denying standing to unnamed class members provide support for the dismissal below. One of the primary rationales for denying standing to appeal to

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[2] That petitioners are willing to jeopardize a settlement accepted by class representatives and class members because they think they would make more money as class representatives than as class members, calls into question whether petitioners could ever fully and adequately represent the interests of the class as required by Fed. R. Civ. P. 23(a)(4).

unnamed class members is that they have the option of opting out of a settlement if they disagree with the result. Guthrie v. Evans, 815 F.2d 626, 627 (11th Cir. 1987). One of the advantages of class litigation is resolution of issues for a large group of people in one action. Allowing class members to appeal defeats that purpose. Croyden Associates v. Alleco, Inc., 969 F.2d 675, 678 (8th Cir. 1992), cert. denied, 113 S.Ct. 1251 (1993). These rationales support the dismissal of the appeal in this case. Allowing the petitioners, who have no stake in the settlement, to attack it on appeal defeats one of the main purposes of the class action mechanism.

Dismissing the appeal in this action was not, as the petitioners argue, an extension of Marino v. Oritz, 484 U.S. 301, 304 (1988); rather it is an obvious and well settled result of similar reasoning. In Marino the non-parties were arguably adversely affected by the consent decree they sought to appeal, but had not intervened in the action. Here the petitioners chose to take themselves out of the class so that they would not be adversely affected by the consent decree. Their opting out also deprived them of standing.

CONCLUSION

The petitioners' appeal was properly dismissed by the Eighth Circuit Court of Appeals because they have no standing to challenge approval of a settlement to which they are not parties.

Dated: April 14, 1993

Respectfully submitted,

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